

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1903.

No. 1341.

235

GEORGE L. WELLINGTON, APPELLANT,

vs.

THE NATIONAL METROPOLITAN BANK OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 24, 1903.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. 1341.

GEORGE L. WELLINGTON, APPELLANT,

vs.

THE NATIONAL METROPOLITAN BANK OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

GEORGE L. WELLINGTON, Appellant,
vs.
THE NATIONAL METROPOLITAN BANK OF WASHINGTON. } No. 1341.

α Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF }
Washington, a Corporation, Plaintiff, } No. 46041. At Law.
vs. }
GEORGE L. WELLINGTON, Defendant.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 Declaration.

Filed February 24, 1903.

In the Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF }
Washington, a Corporation, Plaintiff, } At Law. No. 46041.
vs. }
GEORGE L. WELLINGTON, Defendant.

1. The plaintiff, The National Metropolitan Bank of Washington, a corporation existing under and by virtue of the laws of the United States and having an office and doing business as a national bank in the city of Washington, District of Columbia, sues the defendant, George L. Wellington, for money payable to the plaintiff by the said defendant for that heretofore, to wit, on the 6th day of November, 1902, the defendant by the designation of "Geo. L. Wellington," by his certain promissory note of that date, now overdue and unpaid, promised to pay to the plaintiff, The "National Metropolitan Bank of Washington," for value received, sixty (60) days after date, the sum of sixteen thousand (16,000) dollars with interest thereon

at the rate of six (6) per centum per annum until paid, payable at the office of said plaintiff; but that at the maturity of the said note the said defendant did not pay the same nor any part thereof, nor any interest thereon.

And the plaintiff claims from the defendant on account thereof, the sum of sixteen thousand (16,000) dollars with interest thereon at the rate of six (6) per centum per annum until paid, from the 6th day of November, 1902, according to the particulars of demand hereto attached, besides the costs of this suit, exclusive of all set-offs and just grounds of defence.

2. And the plaintiff, The "National Metropolitan Bank of Washington," sues the defendant, George L. Wellington, for money payable to the plaintiff by the defendant for that whereas heretofore, to wit, on the 6th day of November, 1902, the defendant by the designation of "Geo. L. Wellington," by his certain promissory note of that date, now overdue and unpaid, promised to pay to the plaintiff, The "National Metropolitan Bank of Washington," for value received, sixty (60) days after date, the sum of sixteen thousand (16,000) dollars with interest thereon at the rate of six (6) per centum per annum until paid, payable at the office of said plaintiff, and as collateral security for the payment of which and also as collateral security for all other present and future demands, of any and all kinds, of the said plaintiff against the said defendant, due or not due, deposited with the said plaintiff his four (4) certain promissory notes dated the 15th day of April, 1902, each for the sum of four thousand (4,000) dollars, payable in ninety (90) days after date to the order of the Standard Butterine Company, and authorized the said plaintiff upon the non-performance of his promise to it or the non-payment of any of the demands aforesaid, to sell and dispose of said collateral and apply the proceeds thereof to the payment of his said note to it, all of which is more fully set forth in the particulars of demand hereto attached and made a part hereof; that the said defendant at the maturity of said note, did not pay the same nor any part thereof nor any interest thereon; that the said plaintiff has not sold or disposed of the collateral deposited with it to secure the payment of said note nor any part thereof, and still holds the same, no part or portion of which has been paid.

And the plaintiff claims from the defendant on account thereof, the sum of sixteen thousand (16,000) dollars with interest thereon at the rate of six (6) per centum per annum until paid, from the 6th day of November, 1902, according to the particulars of demand hereto attached, besides the costs of this suit, exclusive of all set-offs and just grounds of defence.

3. And the said plaintiff, The National Metropolitan Bank of Washington, sues the defendant, George L. Wellington, for money payable to the plaintiff by the defendant for goods sold and delivered by the plaintiff to the said defendant; and for work done and materials provided by the plaintiff for the defendant at his request; and for money lent by the plaintiff to the defendant; and for money

paid by the plaintiff for the defendant at his request; and for money received by the defendant for the use of the plaintiff and for money found to be due from the defendant to the plaintiff on accounts stated between them.

And the plaintiff claims from the defendant on account thereof, the sum of sixteen thousand (16,000) dollars with interest thereon at the rate of six per centum per annum until paid, from the 6th day of November, 1902, according to the particulars of demand hereto attached, besides the costs of this suit, exclusive of all set-offs and just grounds of defense.

JOHN B. LARNER,
Attorney for Plaintiff.

4 The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; other wise judgment.

JOHN B. LARNER,
Attorney for Plaintiff.

5 *Particulars of Demand.*

Filed February 24, 1903.

\$16,000.

WASHINGTON, D. C., Nov. 6, 1902.

Sixty days after date for value received, I promise to pay to the National Metropolitan Bank of Washington, or order, at office of said bank, in the city of Washington, D. C., sixteen thousand dollars, with interest at the rate of six per cent. per annum, having deposited with said bank, as collateral security for the payment of this note, and also as collateral security for all other present and future demands, of any and all kind-, of the said bank against the undersigned, due or not due, the following property, viz:

Four notes Geo. L. Wellington \$4000. each, April 15, 1902 90 days each payable to order of Standard Butterine Co.

and do hereby authorize the said bank, on the non-performance of this promise or the non-payment of any of the demands aforesaid, or failure to furnish further security as hereafter agreed, to sell the whole or any part of said collaterals, or substitutes therefor or additions thereto, at any broker's board or public or private sale, at the option of the said bank, without notice of intention to sell or of the time or place of sale, and without demand of payment of this note or of any of the said demands, and after deducting all expenses of collection and sale, to apply the residue of the proceeds to pay any or all of said demands, in whole or in part, due or not due, including this note, making rebate of interest upon demands not matured by their terms; and hereby agree that at any such sale the said bank may become the purchaser of any or all of said collaterals, and

may hold the same thereafter in its own right absolutely, free from any claim of the undersigned; and agree that in case of deficiency the undersigned will pay to the said bank the amount thereof forthwith after such sale, with legal interest; and do further agree that if, in the opinion of the said bank or any of its officers, the market value of the said collaterals, or any substituted or hereafter deposited, or the remainder, after the application of any part thereof to any other note or claim, for which I may be liable, shall at any time be less than ten per cent. beyond the amount of this note and interest, the undersigned will immediately furnish such further security as will be satisfactory to the said bank, and that in case of failure so to do, this note thereupon, at the option of the said bank, shall become due and payable forthwith, the said bank being also authorized in such case to sell the collaterals, or any part thereof, as above provided; it is understood that all securities hereby and hereafter pledged shall in like manner be applicable to secure payment of any past and future obligations of the undersigned, and all securities in the possession of the bank shall stand as one general continuing collateral security for all obligations due or to become due to the bank; and it is hereby further agreed that upon the transfer of this note, the said bank may deliver the said collaterals, or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights above given to the said bank in respect thereto, and the said bank shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter.

And I do further agree that should any litigation ensue to said bank with respect to the collection of the said note or the holding or sale of the said collateral security, or any part thereof, the said bank shall be paid such reasonable counsel fees as it shall have paid to its attorney for the conduct of such litigation, which sum shall be also secured by said collateral security, and be payable on demand of said bank, in default of which payment said collateral security may be sold as is hereinbefore provided, and I do hereby promise to pay to said bank any deficiency resulting from the inadequacy of said collateral security in this respect.

(Signed)

GEO. L. WELLINGTON.

Address Cumberland, Md.

Original note filed, April 21, 1903.

Filed February 24, 1903.

DISTRICT OF COLUMBIA, ss:

E. Southard Parker, being first duly sworn, deposes and says that he is the president of The "National Metropolitan Bank of Washington," the plaintiff named in the foregoing declaration, said declaration and the particulars of demand thereto attached being hereby referred to and made a part hereof; and that the facts therein

alleged are true; that its cause of action therein is a certain promissory note dated the 6th day of November, 1902, which was made by the said defendant and delivered to the plaintiff, whereby the said defendant by the designation of "Geo. L. Wellington," promised to pay to the plaintiff, The "National Metropolitan Bank of Washington," for value received, in sixty (60) days after date, the sum of sixteen thousand (16,000) dollars with interest thereon at the rate of six (6) per centum per annum until paid, payable at the office of the said plaintiff; that the said defendant, as collateral security for the payment thereof and for the payment of all other present and future demands, of any and all kinds, of the said plaintiff against him, due or not due, deposited with the said plaintiff his four (4) certain promissory notes dated the 15th day of April, 1902, each for the sum of four thousand (4,000) dollars, and payable in ninety (90) days after date thereof to the Standard Butterine Company, and authorized the said plaintiff upon the non-performance of his said promise to it or the non-payment of any of the demands aforesaid, to sell and dispose of said collateral and apply the proceeds thereof to the payment of his said note to it, all of which is more fully set forth in the particulars of demand hereto attached;

7 that at the maturity of the said note the defendant did not pay the same nor any part thereof, nor any interest thereon; that the said plaintiff has not sold or disposed of the collateral deposited with it to secure the payment of said note, nor any part thereof and still holds the same in its hands; that the said collateral is now overdue and no part or portion thereof has been paid and there is now justly due and owing to the said plaintiff by the said defendant on account thereof, the sum of sixteen thousand (16,000) dollars with interest thereon at the rate of six (6) per centum per annum until paid, from the 6th day of November, 1902, according to the particulars of demand hereto attached, besides the costs of this suit, exclusive of all set-offs and just grounds of defence.

E. SOUTHARD PARKER.

Subscribed and sworn to before me this 20th day of February,
A. D. 1903.

[SEAL.]

ALFRED B. BRIGGS,
Notary Public.

Agreement for Extension of Time to Plead.

Filed March 16, 1903.

In the Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF WASH-	} 46041. Law.
ington, Plaintiff,	
vs.	
GEORGE L. WELLINGTON, Defendant.	

It is hereby agreed that the time for the defendant to plead herein be extended until March 25th, 1903.

JOHN B. LARNER,
Attorney for Plaintiff.

SYDNEY E. MUDD,
Attorney for Defendant.

8

Defendant's Plea.

Filed March 25, 1903.

In the Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF	} At Law. No. 46041.
Washington, a Corporation, Plaintiff,	
vs.	
GEORGE L. WELLINGTON, Defendant.	

The defendant, for pleas to the declaration of the plaintiff filed herein, says:

1. That each and every one of the notes mentioned in the plaintiff's declaration, said to have been given by the defendant to the plaintiff, or to the Standard Butterine Company, was without legal consideration.

2. That the notes mentioned in the second paragraph or count of the plaintiff's declaration were signed and made and delivered to the said Standard Butterine Company upon and because of false and fraudulent declarations made to the defendant by the said company and its officers and agents, upon the faith of which he acted in giving said notes.

That the said false and fraudulent representations were to the effect that stock of said company, which was to be delivered to the defendant, was of a ready, marketable value, at or above the face value of the same, and possessed at the time a dividend-earning capacity of much more than the annual rate of interest upon the face value of said stock, and other numerous false and fraudulent

9 representations as to the value of said stock, whereas the said stock was worthless.

And the defendant further says that he is informed and believes that the National Metropolitan Bank of Washington, the assignee and holder of the said four notes, had knowledge of the fraudulent conduct of the said Standard Butterine Company hereinabove set forth, in that the said National Metropolitan Bank of Washington at least had knowledge of such facts constituting or connected with such fraudulent conduct that its action in taking the said notes amounted to bad faith, in accordance with the provisions of section 1360 of the Code of the District of Columbia.

The defendant further says that the said four notes for four thousand dollars each were not, as stated in the plaintiff's declaration, assigned to the plaintiff as collateral security for the said note for sixteen thousand dollars referred to in the said declaration, and the representation that they were so delivered, as set forth in the particulars of demand, in the plaintiff's declaration, is untrue and fraudulent.

That the said four notes were in the possession of the said National Metropolitan Bank of Washington, as assignee and holder of the same from the said Standard Butterine Company, at the time that the said note for sixteen thousand dollars was given to the said plaintiff by the said defendant.

That the said note for sixteen thousand dollars was signed and delivered to the said plaintiff upon no legal consideration whatever, and upon no claim of a consideration other than such fraudulent consideration as attached to and was a part of the consideration for the four notes for four thousand dollars each, as hereinbefore set forth.

10 That at the time of giving said note for sixteen thousand dollars, the defendant had not the information that has since come to him as to the knowledge of the plaintiff as to the fraudulent character of the four notes for four thousand dollars each, as aforesaid.

That the plaintiff had loaned to the Standard Butterine Company an amount of money greatly in excess of the amount allowed by the law regulating loans by national banks, and the defendant believes and says that the plaintiff's purpose in requesting and obtaining his said note for sixteen thousand dollars was to conceal its violation of the Federal statutes in thus loaning to the said Standard Butterine Company an amount of money in excess of that allowed by law, as aforesaid.

SYDNEY E. MUDD,
Attorney for Defendant.

STATE OF MARYLAND, }
Allegany County, } *To wit:*

George L. Wellington, being first duly sworn, deposes and says, that he is the defendant in the above entitled suit, and that the

facts and matters stated in the foregoing pleas are true, to the best of his knowledge and belief.

GEO. L. WELLINGTON.

Subscribed and sworn to before me, a notary public, of the State of Maryland, in and for the aforesaid county, this 24th day of March, A. D. 1903.

[SEAL.]

GEORGE A. SIEBERT,
Notary Public.

11

Motion for Judgment.

Filed March 31, 1903.

In the Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF Washington, Plaintiff, vs. GEORGE L. WELLINGTON, Defendant.	}	At Law. No. 46041.
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And now comes the plaintiff, by its attorney, and moves the court for judgment against the defendant, George L. Wellington, notwithstanding the pleas filed herein.

JOHN B. LARNER,
Attorney for Plaintiff.

To Sydney E. Mudd, Esquire, Colonial hotel, city :

Please take notice that I will call up the above motion at the opening of court or just as soon thereafter as counsel can be heard, on Friday, the 3rd day of April, 1903, before Justice Clabaugh, circuit court No. 2.

JOHN B. LARNER,
Attorney for Plaintiff.

12

Supreme Court of the District of Columbia.

FRIDAY, April 17, 1903.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

* * * * *

THE NATIONAL METROPOLITAN BANK OF Washington, a Corporation, Plaintiff, vs. GEORGE L. WELLINGTON, Defendant.	}	At Law. No. 46041.
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Upon hearing the plaintiff's motion for judgment against the defendant notwithstanding his pleas, it is considered that said motion be, and hereby is, granted : Therefore, it is considered that the plain-

tiff recover against the defendant the sum of sixteen thousand dollars (\$16,000) with interest thereon, at 6 % per annum from the 6th day of November, 1902, until paid, being the money payable by said defendant to the plaintiff by reason of the premises, together with its costs of suit to be taxed by the clerk, and have execution thereof.

THURSDAY, *April 30*, 1903.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

* * * * *

NATIONAL METROPOLITAN BANK OF WASHINGTON, Plaintiff,	} At Law. No. 46041.
<i>vs.</i>	
GEORGE L. WELLINGTON, Defendant.	

It is ordered that the bond for costs on the defendant's appeal be, and hereby is, fixed in the penalty of one hundred dollars.

13 *Order for Appeal, &c.*
Filed May 9, 1903.

In the Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF Washington	} At Law. No. 46041.
<i>vs.</i>	
GEORGE L. WELLINGTON.	

Mr. Clerk :
Please enter an appeal from the ruling and judgment of the court in the above-entitled case, and issue citation to the appellee.
SYDNEY E. MUDD,
Attorney for Defendant.

Memorandum.

May 9, 1903.—Appeal bond filed.

14 In the Supreme Court of the District of Columbia.

THE NATIONAL METROPOLITAN BANK OF Washington, a Corporation,	} At Law. No. 46041.
<i>vs.</i>	
GEORGE L. WELLINGTON.	

The President of the United States to the National Metropolitan Bank of Washington, Greeting :
You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause
2—1341A

therein, under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia, on the 9th day of May, 1903, wherein George L. Wellington, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 9th day of May in the year of our Lord one thousand nine hundred and three.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 9th day of May, 1903

JOHN B. LARNER,
Attorney for Appellee.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 14, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 46041, at law, wherein The National Metropolitan Bank of Washington, a corporation, is plaintiff, and George L. Wellington is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia. In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 5th day of June, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1341. George L. Wellington, appellant, vs. The National Metropolitan Bank of Washington. Court of Appeals, District of Columbia. Filed Jun- 24, 1903. Robert Willett, clerk.

